

- “c. Any and all other issues that can be brought before the Board on appeal of the December 2, 1997 Order of Administrative Law Judge Bryce Benedict.”

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board finds as follows:

The Appeals Board finds that issues b and c are nonjurisdictional issues and will not be considered by the Appeals Board pursuant to an appeal from a preliminary hearing order. See K.S.A. 44-534a, as amended, and K.S.A. 44-551, as amended.

With regard to whether claimant suffered accidental injury arising out of and in the course of his employment, the Appeals Board finds that the Order of the Administrative Law Judge should be affirmed for preliminary hearing purposes.

This case is hotly disputed regarding whether claimant suffered an initial injury while being exposed to muriatic acid at his place of employment. While there are several discrepancies in the record regarding what claimant may or may not have alleged after the incident and at the emergency room, there is also evidence in the record to show that claimant was exposed to muriatic acid and did suffer some symptomatology as a result. In addition, while he was at the emergency room being treated, claimant fell off a gurney and suffered an additional injury to his back which would also be compensable and was so found in the Appeals Board's November 25, 1997, Order.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Bryce D. Benedict dated December 2, 1997, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of January 1998.

BOARD MEMBER

- c: Walter P. Robertson, Junction City, KS
Matthew S. Crowley, Topeka, KS
Bryce D. Benedict, Administrative Law Judge
Philip S. Harness, Director